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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,077	08/17/2005	Eugene J. Fox	CGL02/0020US01	4426
38550	7590	05/01/2008	EXAMINER	
CARGILL, INCORPORATED LAW/24 15407 MCGINTY ROAD WEST WAYZATA, MN 55391			HELMER, GEORGIA L	
ART UNIT	PAPER NUMBER	1638		
MAIL DATE		DELIVERY MODE		
05/01/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/521,077	FOX ET AL.
	<b>Examiner</b> GEORGIA HELMER	<b>Art Unit</b> 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) \_\_\_\_ is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: ____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date: ____	6) <input type="checkbox"/> Other: ____

**DETAILED ACTION*****Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 2, 3, 31, and 32, drawn to a process for producing a sonicated seed comprising providing a plant seed and sonicating the seed in the presence of a solvent at an intensity of 95 W/cm<sup>2</sup> and a frequency range from about 16 to 100 kHz.

Group II, claim(s) 4-8 and 22, drawn to the method with sonication intensities of 95 W/cm<sup>2</sup> to 500 W/cm<sup>2</sup>.

Group III, claim(s) 9-13, drawn to the method wherein the solvent is drawn from the group consisting of an aqueous solvent, an organic solvent and a mixture thereof.

Group IV, claim(s) 14-21, drawn to the method wherein the plant seed is selected from the group consisting of a cereal and an oil seed.

Group V, claim(s) 23 and 24, drawn to the method wherein the sonicated plant seed is used to produce a starch product.

Group VI, claim(s) 25 and 26, drawn to the method wherein the sonicated plant seed is used to produce a fermentation feedstock.

Group VII, claim(s) 27 and 28, drawn to the method for using the sonicated plant seed as a fermentation feedstock.

Group VIII, claim(s) 29 and 30, drawn to a fermentation feedstock produced according to claim 25 or 26.

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2. If Applicant chooses Group III or Group IV, Applicant needs further to choose from the groups listed below:

If Applicant chooses Group III:

- (a) an aqueous solvent.
- (b) An organic solvent, or
- (c) a mixture of aqueous and organic solvents.

If Applicant chooses Group IV, Applicant needs further to choose from the process wherein the plant seed is selected from the group consisting of a cereal and an oil seed, wherein

(i) the cereal is selected from the group consisting of corn, rice, sorghum barley and wheat;

(ii) the oil seed is selected from the group consisting of soybean, peanut, canola, cottonseed, safflower, sunflower, castor bean and flax.

3. The inventions or groups of inventions of Groups I – VIII are not so linked as to form a single general inventive concept under PCT Rule 13.1, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature linking inventions of Groups I – VIII is a process comprising providing a plant seed and sonicating the seed in the presence of a solvent at an intensity of at least 95 W/cm<sup>2</sup> and a frequency range from about 16 to 100 kHz. Soll, et. al. (US 6,453,609, filed 6 September 2000, issued 24 September 2002) teaches a method whereby a plant seed is sonicated

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in the presence of water, wherein the frequencies are between 15 kHz and 30 kHz and wherein the intensities are from 10 kHz and 80 kHz and up to greater than 100 kHz. See Soll, et. al. column 7, lines 41-49. Therefore, the technical feature linking the inventions of Groups – VIII does not constitute a special technical feature as defined by PCT Rule 13.2 as it done not define a contribution over the prior art.

Accordingly, Groups – VIII are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

4. Claim 1 link(s) inventions I through VIII. The restriction requirement among the linked inventions is **subject to** the nonallowance of the linking claim(s), claim 1. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104. **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or

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nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01. Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

5. The election of an invention may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGIA HELMER whose telephone

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number is (571)272-0796. The examiner can normally be reached on 10-6 Monday & Tuesday, 1-5 pm Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Georgia Helmer/ PhD  
Patent Examiner, Art Unit 1638  
29 April 2008